

House File 2360 - Introduced

HOUSE FILE 2360
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 572)

A BILL FOR

1 An Act relating to the authorized activities of a real estate
2 broker or real estate salesperson and the authorized
3 activities of auctioneers in relation thereto.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 543B.7, subsection 5, Code 2011, is
2 amended to read as follows:

3 5. a. The acts of an auctioneer in conducting a public
4 sale or auction. The auctioneer's role must be limited
5 to establishing the time, place, and method of an auction;
6 advertising the auction ~~including~~ which shall be limited to
7 a brief description of the property for auction and the time
8 and place for the auction; and crying the property at the
9 auction. The auctioneer shall provide in any advertising the
10 name and address of the real estate broker who is providing
11 brokerage services for the transaction and the name of the
12 real estate broker, ~~or attorney, or closing company~~ who is
13 responsible for closing the sale of the property. The real
14 estate broker providing brokerage services shall be present at
15 the time of the auction and, if found to be in violation of this
16 subsection, shall be subject to a civil penalty of two thousand
17 five hundred dollars. If the auctioneer closes or attempts to
18 close the sale of the property or otherwise engages in acts
19 defined in sections 543B.3 and 543B.6, then the requirements of
20 this chapter do apply to the auctioneer. If an investigation
21 pursuant to this chapter reveals that an auctioneer has
22 violated this subsection or has assumed to act in the capacity
23 of a real estate broker or real estate salesperson, the real
24 estate commission ~~may~~ shall issue a cease and desist order,
25 ~~and shall issue a warning letter notifying the auctioneer of~~
26 ~~the violation~~ impose a penalty of two thousand five hundred
27 dollars for the first offense, and impose a penalty of up to
28 the greater of ten thousand dollars or ten percent of the real
29 estate sales price for each subsequent violation.

30 b. An auctioneer conducting a real property auction shall
31 not do any of the following:

32 (1) Contact the public by telephone or in person for the
33 purpose of securing prospects for real property auctions,
34 listings, leasing, sales, exchanges, or property management.

35 (2) Independently host open houses.

1 (3) Prepare promotional materials or advertisements beyond
2 a brief description of the real property and the time and place
3 for the auction, unless approved by a supervising licensed real
4 estate broker.

5 (4) Independently show real property.

6 (5) Answer any questions regarding real property
7 title, financing, or closings other than time and location
8 information.

9 (6) Answer any questions regarding a real property auction
10 listing except for information regarding price and amenities
11 expressly provided in writing by the owner or a supervising
12 real estate broker.

13 (7) Discuss or explain a real property contract, lease,
14 agreement, or other real estate document.

15 (8) Negotiate or agree to any commission, partial
16 commission, management fee, or referral fee on behalf of a
17 supervising real estate broker.

18 (9) Discuss with the owner of real property the terms and
19 conditions of the real property offered for sale or lease.

20 (10) Collect or hold deposit moneys, rent, other moneys, or
21 anything of value received from the owner of real property or
22 from a prospective buyer or tenant.

23 (11) Provide owners of real property or prospective buyers
24 or tenants with any advice, recommendations, or suggestions
25 regarding the sale, purchase, exchange, rental, or leasing of
26 real property that is listed, anticipated to be listed, or
27 currently available for auction, sale, or lease.

28 (12) Represent in any manner, orally or in writing, that
29 the auctioneer is licensed or affiliated with a particular real
30 estate firm or real estate broker as a licensee under this
31 chapter.

32 Sec. 2. Section 543B.34, Code Supplement 2011, is amended by
33 adding the following new subsection:

34 NEW SUBSECTION. 1A. For the purposes of subsection 1,
35 a complaint which would otherwise be considered a verified

1 complaint shall not be disqualified from verification on the
2 basis of being received anonymously or in an unsigned form.

3 EXPLANATION

4 This bill relates to licensing provisions governing real
5 estate brokers and real estate salespersons contained in Code
6 chapter 543B.

7 The bill modifies provisions in Code section 543B.7 which
8 exclude the acts of an auctioneer in conducting a public
9 sale or auction from the provisions of the Code chapter
10 under specified circumstances. Currently, to qualify for the
11 exclusion an auctioneer's role must be limited to establishing
12 the time, place, and method of an auction; advertising the
13 auction including a brief description of the property for
14 auction and the time and place for the auction; and crying
15 the property at the auction. The bill changes this provision
16 such that advertising the auction shall be limited to a brief
17 description of the property for auction and the time and place
18 for the auction. The bill also adds providing the name of
19 the closing company to individuals or entities required to be
20 identified by an auctioneer in advertisements.

21 The bill mandates issuance of a cease and desist order by
22 the real estate commission if an investigation reveals that an
23 auctioneer has violated provisions governing exclusion from the
24 Code chapter or has assumed to act in the capacity of a real
25 estate broker or real estate salesperson. Currently, issuance
26 of an order is optional. The bill deletes a current provision
27 that the commission issue a warning letter notifying the
28 auctioneer of the violation, substituting this with imposition
29 of a penalty in the amount of \$2,500 for a first offense.

30 Additionally, the bill contains a list of specifically
31 prohibited activities of an auctioneer when conducting real
32 property auctions.

33 The bill also provides, with reference to commission
34 investigations regarding the actions of a real estate broker,
35 real estate salesperson, or other person assuming to act

1 in either capacity, that in the event an investigation is
2 commenced upon receipt of a verified complaint in writing from
3 a person, the complaint shall not be disqualified on the basis
4 of being received anonymously or in an unsigned form.